MONTANA LEGISLATIVE HISTORY

Chapter 536 19 75

Bill H _____ S 5 Original bill & history X C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3-10	✓ C	Hearing Date(s)	1-16	✓ C
	3-19	✓ C		1-17	✓ C
	_____	___ C		2-1	✓ C
	_____	___ C		_____	___ C
Date Out	_____	___ C			

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

Judiciary

Senate 1975

44th LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
2	1/7/75	1/10/75	1/17/75			1/17/75			
3	1/8/75	1/16/75	1/21/75	1/18/75					
4	1/7/75	1/10/75	2/4/75			2/1/75			
5	1/7/75	1/16/75	2/4/75			2/1/75			
6	1/7/75	1/16/75	2/4/75		2/4/75				
16	1/7/75	1/9/75	1/9/75	1/9/75					
21	1/7/75	1/9/75	1/13/75	1/13/75					
22	1/7/75	1/9/75	1/9/75	1/9/75					
27	1/7/75	1/17/75	1/21/75			1/18/75			
45	1/13/75	1/18/75	1/22/75		1/21/75				
48	1/13/75	1/18/75	1/21/75			1/18/75			
49	2/4/75	2/24/75	2/25/75		2/24/75				
75	1/16/75	1/21/75	1/22/75		2/22/75				
80	1/16/75	1/24/75	1/27/75		1/27/75				
103	1/17/75	1/25/75	2/4/75			2/1/75			
112	1/17/75	2/24/75	2/24/75	2/24/75					
120	1/18/75	1/24/75	1/24/75	1/24/75					

SENATE BILL NO. 5

INTRODUCED BY REGAN, GREELY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MARRIAGE AND DISSOLUTION OF MARRIAGE LAWS OF THIS STATE BY ADOPTING THE PROVISIONS OF THE UNIFORM MARRIAGE AND DIVORCE ACT AS RECOMMENDED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS; AMENDING SECTION 48-130, R.C.M. 1947; AND REPEALING SECTIONS 21-101 THROUGH 21-150, 48-101, 48-103 THROUGH 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 THROUGH 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 THROUGH 48-203, 48-206, AND 48-207, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as the "Uniform Marriage and Divorce Act".

Section 2. Purposes of act. This act shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) provide adequate procedures for the solemnization and registration of marriage;

(2) strengthen and preserve the integrity of marriage and safeguard family relationships;

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(3) promote the amicable settlement of disputes that have arisen between parties to a marriage;

(4) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(5) make reasonable provision for spouse and minor children during and after litigation; and

(6) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

Section 3. Uniformity of application and construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

Section 4. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this act is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of this state.

Section 5. Form of application, license, certificate, and consent. (1) The director of the department of health and environmental sciences shall prescribe the form for an

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application for a marriage license, which shall include the following information:

(a) name, sex, occupation, address, social security number, date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child, of whom both parties are parents, born prior to the making of the application unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of health and environmental sciences shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

Section 6. License to marry. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one (1) party has

appeared before the clerk of the district court and paid the marriage license fee of five dollars ($5), the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of eighteen (18) years at the time the marriage license is effective, or will have attained the age of sixteen (16) years and has either the consent to the marriage of both parents or his guardian, or judicial approval; and

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.

Section 7. Effective date of license. A license to marry becomes effective throughout this state three (3) days after the date of issuance, unless the judge of the district court orders that the license is effective when issued, and expires one hundred eighty (180) days after it becomes effective.

Section 8. Judicial approval. (1) The district court, after a reasonable effort has been made to notify the parents or guardian of each underaged party, may order the clerk of the district court to issue a marriage license and a marriage certificate form:

(a) to a party aged sixteen, (16) or seventeen (17) years who has no parent capable of consenting to his marriage, or whose parent or guardian has not consented to his marriage; or

(b) to a party under the age of sixteen (16) years who has the consent of both parents to his marriage, if capable of giving consent, or of his guardian.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

Section 9. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the clerk of the

district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(4) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

Section 10. Prohibited marriages. (1) Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between nieces and uncles, and between aunts and nephews, and between first cousins, and between persons, either of whom is feebleminded, are prohibited and void from the beginning, whether the relationship is legitimate or illegitimate.

(2) Children born of a prohibited marriage are

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legitimate.

Section 11. Declaration of invalidity. (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was solemnized the other party did not know of the incapacity.

(c) a party was under the age of sixteen (16) years and did not have the consent of his parents or guardian and judicial approval or was aged sixteen (16) or seventeen (17) years and did not have the consent of his parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsection (1)(a) through (c) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought

after the death of either party to the marriage:

(a) for a reason set forth in subsection (1)(a), by either party or by the legal representative of the party who lacked capacity to consent, no later than ninety (90) days after the petitioner obtained knowledge of the described condition;

(b) for the reason set forth in subsection (1)(b), by either party, no later than one (1) year after the petitioner obtained knowledge of the described condition;

(c) for the reason set forth in subsection (1)(c), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one (1) of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the

date of the marriage. The provisions of this act relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

Section 12. Putative spouse. Any person who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited (section 10) or declared invalid (section 11). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

Section 13. Application. All marriages contracted within this state prior to the effective date of this act, or outside the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicil of the

parties, are valid in this state.

Section 14. Validity of common law marriage. Common law marriages are not invalidated by this act. Declarations of marriage pursuant to sections 48-130 through 48-132 are not invalidated by this act.

Section 15. Application of the Montana rules of civil procedure to proceedings under this act. (1) The Montana rules of civil procedure apply to all proceedings under this act, except as otherwise provided in this act.

(2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of _____ and _____". A custody or support proceeding shall be entitled "In re the (Custody) (Support) of _____".

(3) The initial pleading in all proceedings under this act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this act, shall be denominated as provided in the Montana rules of civil procedure.

(4) In this act, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

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Section 16. Dissolution of marriage--legal separation. (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state, or was stationed in this state while a member of the armed services, and that the domicil or military presence has been maintained for ninety (90) days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence

(i) that the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage; and

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of section 19 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or provided for a separate, later hearing to

complete these matters.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

Section 17. Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) All proceedings under this act are commenced in the manner provided by the Montana rules of civil procedure.

(2) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of section 16 exist and that the marriage is irretrieveably broken in that either

(i) the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties

towards the marriage, and that there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage, and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenace of a spouse; and

(f) the relief sought.

(3) Either or both parties to the marriage may initiate the proceeding.

(4) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana rules of civil procedure and may within twenty (20) days after the date of service file a verified response. No decree may be entered until twenty (20) days after the date of service.

(5) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(6) The court may join additional parties proper for the exercise of its authority to implement this act.

Section 18. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution

of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(4) A response may be filed within twenty (20) days after service of notice of motion or at the time specified in the temporary restraining order.

(5) On the basis of the showing made and in conformity with sections 22 and 23, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(6) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 30; and

(c) terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

Section 19. Irretrievable breakdown. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or

one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) make a finding whether the marriage is irretrievably broken; or

(b) continue the matter for further hearing not fewer than thirty (30) nor more than sixty (60) days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that tney seek counseling. The court at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

(4) Nothing in this section shall be interpreted to affect the provisions of sections 36-201 through 36-205, known as the Montana Conciliation Law.

Section 20. Separation agreement. (1) To promote

amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance, and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be

ordered to perform them, or

(b) if the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

Section 21. Disposition of property. (1) In a proceeding for dissolution of a marriage, legal separation, or disposition of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both however and whenever acquired, and whether the title

thereto is in the name of the husband or wife or both. In making apportionment the court shall consider the duration of the marriage, and prior marriage of either party, antenuptial agreement of the parties, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates, and the contribution of a spouse as a homemaker or to the family unit. In disposing of property acquired prior to the marriage; property acquired by gift, bequest, devise or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including the non-monetary contribution of a homemaker; the extent to which such contributions have facilitated the maintenance of this property and whether or not the property disposition serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

Section 22. Maintenance. (1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for his reasonable needs, and

(b) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant facts including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including

the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age, and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

Section 23. Child support. In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(1) the financial resources of the child;

(2) the financial resources of the custodial parent;

(3) the standard of living the child would have enjoyed had the marriage not been dissolved;

(4) the physical and emotional condition of the child, and his educational needs; and

(5) the financial resources and needs of the noncustodial parent.

Section 24. Representation of child. The court may appoint an attorney to represent the interests of a minor dependent child with respect to his support, custody, and visitation. The court shall enter an order for costs and fees in favor of the child's attorney. The order shall be made against either or both parents, except that, if the responsible party is indigent, the costs shall be waived.

Section 25. Payment of maintenance or support to court. (1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

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Section 26. Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds two (2) weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding one dollar ($1) as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

Section 27. Costs--attorney's fees. The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Section 28. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than six (6) months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of court shall give notice of the entry of a decree of dissolution or legal separation:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered who shall enter the fact of dissolution or separation in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court may, and if there are no

children of the parties shall, order her maiden name or a former name restored.

Section 29. Independence of provisions of decree or temporary order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

Section 30. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in subsection (6) of section 20, the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly

provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

Section 31. Jurisdiction--commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state

(i) is the home state of the child at the time of commencement of the proceedings, or

(ii) had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because

(i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and

(i) has been abandoned or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with paragraphs (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child, and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under paragraphs (c) and (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

Section 32. Best interest of child. The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school, and

community; and

(5) the mental and physical health of all individuals involved.

The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.

Section 33. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in section 40. The court may award temporary custody under the standards of section 32 after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child requires that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under subsection (a)(ii) or (b) of section 31 is dismissed, any temporary custody order is vacated.

Section 34. Interviews. (1) The court may interview the child in chambers to ascertain the child's wishes as to

his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

Section 35. Investigations and reports. (1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the county welfare department.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent

of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of sixteen (16) unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data, and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

Section 36. Hearings. (1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(3) The court without a jury shall determine questions

of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

Section 37. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

Section 38. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's

upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the county welfare department to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

Section 39. Modification. (1) No motion to modify a custody decree may be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral, or emotional health.

(2) If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the

circumstances of the child or his custodian, and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian; or

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

(3) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

Section 40. Affidavit practice. A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

S 35

Section 41. Application. (1) This act applies to all proceedings commenced on or after its effective date.

(2) This act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this act shall be in compliance with this act.

(3) This act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this act.

(4) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this act, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

Section 42. Act supersedes other laws or regulations. If any provision of this act is in conflict with any other law of this state, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law, rule, or regulation shall be deemed superseded for the purpose of this act.

Section 43. Severability. If any provision of this act or application thereof to any person or circumstance is

held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

Section 44. Section 48-130, R.C.M. 1947, is amended to read as follows:

"48-130. Declaration of marriage without solemnization--how made. Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in section ~~48-116~~ 9 of this act must prior to executing the declaration, secure the premarital test certificate required by ~~section 48-134~~ this act, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed. Any such declaration of marriage shall substantially contain the following:

1. The names, ages, and residences of the parties;

2. The fact of marriage;

3. Name of father~~,~~ and maiden name of mother~~,~~ of both parties, and address of each;

4. That both parties are legally competent to enter into the marriage contract.

Such declaration must be subscribed by the parties and attested by at least two (2) witnesses, and formally

acknowledged before the clerk of the district court of said county. Unless all the provisions of this act shall be complied with the marriage shall be deemed invalid."

Section 45. Sections 21-101 through 21-150, 48-101, 48-103 through 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 through 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 through 48-203, 48-206, and 48-207, R.C.M. 1947, are repealed.

Section 46. This act is effective January 1, 1976.

-End-

SB-5

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
JANUARY 16, 1975

The meeting was called to order by Senator Towe, Chairman, at 9:40 a.m. in Room 410 of the Capitol Building.

The following bills were heard: SB 3
SB 6
SB 5

SB3 - Senator Regan, District 31, chief sponsor of the bill, stated the bill dealt with an archaic law dealing with the indenturing of children which is in conflict with Article 2, Section 4 of the new constitution.

Rosemary Zion, testifying on behalf of the bill, urged support of it and stated the present law is outdated and archaic.

SB6 - Senator Regan, District 31, chief sponsor of the bill, stated the main provision of this bill is to make patronization of prostitutes unlawful. She felt not passing the bill would result in automatic legalization of prostitution. By including the patron in the offense, it is felt any discriminatory aspect of the bill is avoided. At present, approximately twelve states cover the patron in their laws. A 1967 FBI report equates commercial vice with prostitution.

Rosemary Zion stated her support of the bill as a member of the Legislative Council staff working with the interim committee which considered this bill.

Betsy Scanlin, representing the Women's Caucus of the University of Montana Law Caucus, stated her support of the bill. She felt it is necessary to prosecute all parties to the offense, including the prostitute, the patron and the operator. She recommended passage of the bill because it includes the aspects of duality of offense and aiding and abetting.

John Hollow, University of Montana Law School, and representing himself, presented written testimony in favor of the bill (attached).

SB 5 Senator Regan, District 31, and chief sponsor of the bill, introduced the bill as an adaptation of the Uniform Marriage and Divorce Act.

Rosemary Zion stated that the Equal Rights Interim Sub-Committee passed the bill out with the recommendation of further study.

She stated the purpose of the bill is to erase discrimination on the basis of sex or fault. However, some states have encountered difficulties due to the inequity inherent in the position of the person in the social structure. This bill has endeavored to take into consideration the life and circumstances of the partners. Irreconcilable differences is the only grounds for divorce in the bill. It was felt best to completely revise the Marriage and Divorce Act in order to provide a framework within which to work rather than to take a piecemeal approach on the basis of only sex and fault.

Barbara Bennetts Lynch presented written testimony on behalf of Mary Beth Linder, Helena Women's Political Caucus (attached).

Carolyn Schwinden, representing the Women's Caucus of the University of Montana Law School, expressed her support of the bill stating it is desirable to have uniform state laws due to the mobility of people.

Deidre Caughlan, representing Women's Place, the Women's Resource Center of the University of Montana, stating her support of the bill, said she was particularly in favor of the section on support being considered for both parties. She felt the child support provisions are equitable also.

John Wilson, Chief, Bureau of Records and statistics, Department of Health and Environmental Sciences, presented his written remarks to the Committee (attached).

THE COMMITTEE WILL DISCUSS THE BILL IN COMMITTEE JANUARY 17, 1975 WITH THE POSSIBILITY OF REFERRING IT TO A SUB COMMITTEE FOR FURTHER STUDY.

There being no further business, the meeting adjourned to reconvene Friday, January 17, 1975, at 9:30 a.m.

Thomas E. Lee

CHAIRMAN

ROLL CALL

Judiciary COMMITTEE

~~SECOND HALF~~ - ~~43rd~~ 44th LEGISLATIVE SESSION 1975 Date 1/1

E	PRESENT	ABSENT	EXCUSED
Thomas E. Towe	X		
Joe R. Roberts	X		
V. E. Cetrone	X		
Margaret S. Warden	X		
Robert J. Brown	X		
Glen L. Drake	X		
Jean A. Turnage	X		
Michael Greely	X		

DAT January 16, 1975

COMMITTEE ON JUDICIARY BILL NO. S.B. 6

VISITOR'S REGISTER

NAME	REPRESENTING	BILL NO	Check One	
			Support	Oppos
[illegible]		SB5		
[illegible]	[illegible]			
Deirdre M. Caughlin	Women's Place Women's Resource Center	SB 5	—	
[illegible]	[illegible]			
Lois Wilson	Dept. of Health [illegible]	SB5		

Name _____ Bill No. SB 3,5,6

Address _____ Date 1/16/25

Whom do you represent? _____

Amend?_____ Oppose?_____ Support? ✓

Please leave prepared statement with secretary.

Name Barbara Kennedy Bill No. SB5

Address 24 S. Benton - Helena Date 1-16-75

Whom do you represent? Montana Political Caucus

Amend?_____ Oppose?_____ Support? ✓

Please leave prepared statement with secretary.

TESTIMONY SUBMITTED IN
SUPPORT OF THE UNIFORM MARRIAGE AND
DIVORCE ACT

On behalf of the Helena Women's Political Caucus, I wish to urge support of Senate Bill 5, the Uniform Marriage and Divorce Act. This act is a vital and most necessary piece of legislation which will insure fair and equal treatment to all involved in marriage, separation and divorce. It seeks to strengthen the institutions of marriage and family yet it realistically confronts marital breakdown and in such instances, seeks to lessen or minimize such a crisis for spouses and children. Reflecting a true awareness of marital dispute, irreconcilable differences would be the sole basis for dissolution. Such a singular basis would simplify the procedure and reduce the amount of personal attack (necessitated by our present law). Settlement of property and support would become fair and accessible to either party: the needs and resources of either spouse would be prime factors. A final benefit provided by this act would be to the children involved in separation and divorce cases. Their interests would be the paramount, overriding concern in custody awards. Both parents would be equally considered to be the custodian of their children.

This act would support marriage yet humanize its dissolution. It would encourage compassion in our courts and hasten justice for all concerned. This bill will have more far-reaching ramifications than most legislation ever considered.

Mary Beth Linder
Helena Women's Political Caucus
918 N. Benton Ave.
Helena, Mont. 443-3574

Name Carolyn Schwerdtfeger Bill No. SB 5

Address 4433 Jackson Date 1/16/75

Whom do you represent? Women Caucus, Student Gov Assoc.

Amend?_____ Oppose?_____ Support? X

Please leave prepared statement with secretary.

Name Deirdre Caughlan Bill No. 5

Address Women's Resource Center, Miss Missoula Date 1/16/75

Whom do you represent? Women's Resource Center, Missoula
Women's Place

Amend?_____ Oppose?_____ Support? ✓

Please leave prepared statement with secretary.

January 16, 1975

My name is John Wilson. I am chief of the Bureau of Records and Statistics, State Department of Health and Environmental Sciences.

My concern with Senate Bill #5 is limited to the effects, if any, the legislation will have on the state's vital statistic reporting system on marriage and divorce.

Section 4 defines marriage as ". . . a personal relationship between a man and a woman rising out of a civil contract to which consent of the parties is essential". Section 5 provides that one of the items to be reported is "sex". By definition we would assume that the groom is male and the bride is female. Based on the definition provided in Section 4, we question whether or not this item is necessary.

Section 5 also provides for the reporting of occupation. The reporting of occupation alone has limited value; for example, an engineer may be a civil engineer, electrical engineer, custodial engineer, locomotive engineer, etc. To be meaningful, the item on occupation needs to be accompanied by one specified "business or industry".

Section 5 provides guidance for the reporting of marriage, however, we do not find any provision in the bill providing for the reporting of marital dissolutions. This is probably unnecessary because Sections 69-4433 and 69-4434 in the existing Montana law do provide for reporting of divorce and annulments. Section 69-4432 in the present law provides for reporting of marriage.

Mr. Wilson also included in his testimony a request to amend Section 5, page 3, line 1 following the word "include" to insert the words "but not limited to".

Name Margaret S Davis Bill No. SB 3, [illegible]

Address 917 Harrison, Helena, MT Date 13 Jan 75

Whom do you represent? League of Women Voters of Montana

Amend?_____ Oppose?_____ Support? +

Please leave prepared statement with secretary.

SB 3 - Support repeal - Present law abridges rights of mother by comparison w/ father's rights. And of course, any rights the child might have are not considered at all. Archaic.

SB6 - support amended bill - "It takes two to tango (or tangle)" Prostitution is a two party crime; both parties must be held culpable equally. The League of Women Voters has no position on prostitution per se, but commends legislative efforts to bring such laws into compliance with the equal rights and dignities provisions of the 1972 Constitution.

The meeting was called to order by Senator Towe, Chairman at 9:40 a.m. in Room 442 of the Capitol Building.

The Committee discussed the following bills: SB 27
SB 5
SB 4
SB 2

SB 27 - Senator Murphy, from District 40 and sponsor of the bill, stated the bill simply raises the amount of inheritance tax exemption to $60,000 applying it to all immediate family members. The intent of the bill is to bring exemption amounts in line with inflated property values of the past few years. Small businessmen, farmers and ranchers will derive primary benefit from the bill. The approximate cost to the state will be $1.2 million a year.

Clyde Jarvis, President, Montana Farmers Union, spoke in support of the bill and presented his written testimony (attached).

Mark E. Taliaferro, representing the Montana Farm Bureau, expressed total support of the bill by that group.

Spike Van Cleve, representing the Sweet Grass County Preservation Association, expressed support of the bill by that association. He stated that the increased exemption will help keep young ranch and farm people in agriculture and will help avoid the trend of subdividing agricultural lands.

Mrs. Sandy Sargent, representing the Environmental Informati Center, presented her written testimony to the Committee (attached).

Senator Murphy stated that the inheritance exemption will be of great benefit to farmers and ranchers becuase inflation has increased property values immensely while profit margins have not increased to any degree.

SB 5
SB 4 - AFTER DISCUSSION, THE COMMITTEE VOTED TO ASSIGN SB 4 AND SB 5 TO A SUB-COMMITTEE FOR FURTHER STUDY. SENATOR TOWE APPOINTED SENATOR WARDEN, SENATOR BROWN, AND SENATOR GREELY TO THE SUB-COMMITTE. SENATOR GREELY WAS APPOINTED CHAIRMAN.

SB 2 - SENATOR TURNAGE MOVED THE ADOPTION OF THE FOLLOWING AMENDMENT TO THE BILL: TO AMEND PAGE 16, SECTION 8, SUB-SECTION (3), LINE 18 FOLLOWING THE WORD "HIM" INSERTING THE FIGURE AND WORD "/HER"; AND FURTHER AMEND PAGE 16, SECTION 8, SUB-SECTION (3), LINE 19 BY STRIKING THE WORD "MAN" AND INSERING IN LIEU THEREOF THE WORD "PERSON".

The meeting was called to order by Senator Towe, Chairman, at 9:3[illegible] in room 442 of the Capitol Building.

The following bills were discussed: HB 99
EB 31
SB 5
SB 4
SB 103.

Senator Cetrone was excused at 10:00 a.m.

HB 99 Representative Bardanouve, District 6, and sponsor of the bill, stated the purpose of the bill is to enable the Aftercare program to supervise juveniles released from a correctional center until age twenty one rather than age eighteen.

Nick Rottering, staff attorney, Department of Institutions, stated that a law passed in 1973 lowered the age of supervis to age eighteen. The Youth Court Act recommends the age of twenty one. The Attorney General issued an opinion stating the jurisdiction of Aftercare ended at age 18. Mr. Rotterin noted a lawsuit has been filed against Aftercare by a youth whose rehabilitation program terminated at age eighteen even though it specified actions beyond that age. He felt this bill would eliminate the problem.

The public hearing was closed and the Committee went into Executive Session.

HB 31 SENATOR GREELY MOVED TO AMEND THE TITLE BY STRIKING THE FOLLOWING LANGUAGE: " CODIFY THE SUBSTANCE OF THE FINAL PLAN OF THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION FOR MONTANA CONGRESSIONAL AND LEGISLATIVE DISTRICTS FILED WITH THE SECRETARY OF THE STATE PURSUANT TO SECTION 43-117, R.C.M. 1947, " AND INSERTING IN LIEU THEREOF " RELATING TO THE DESCRIPTION OF CONGRESSIONAL AND LEGISLATIVE DISTRICTS EXISTING PRIOR TO THE PLAN SUBMITTED BY THE MONTANA DISTRICT AND APPORTIONMENT COMMISSION," AND THAT THE COMMITTEE DO CONCUR IN THE BILL AS AMENDED. THE MOTION CARRIED UNANIMOUS ON A ROLL CALL VOTE.

SB 5 Pat Driscoll, Committee Researcher, presented the formal draft of the amendment, the intent of which was approved January 29, as follows:

(a) Amend page 4, lines 22 and 23 by striking the following: "after a reasonable effort has been made to notify the parents or guardian of each underaged part"
(b) Amending page 4 by striking all of line 25 and page 5 by striking all of lines 1 through 7 and inserting in lieu thereof the following language:

"a marriage certificate form to a party aged sixteen (16) or seventeen (17) years who has no parent capable of consenting to his marriage, or has the consent of both parents to his marriage, of capable of giving consent, or of his guardian. The court may require both parties to participate in a reasonable period of marriage counseling with a designated counselor as a condition of the order for issuance of a marriage certificate form under this section."

SENATOR GREELY MOVED TO AMEND THE AMENDMENT FOLLOWING "PARENTS" TO READ "OR THE PARENT HAVING ACTUAL CARE, CUSTODY, AND CONTROL AND INSERTING IN THE LAST LINE FOLLOWING "MARRIAGE", THE WORDS "LICENSE AND A MARRIAGE". THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS ROBERTS AND WARDEN VOTING NO.

SENATOR GREELY MOVED THE ADOPTION OF THE AMENDMENT AS AMENDED. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SENATOR GREELY MOVED TO AMEND PAGE 4, LINE 2 BY STRIKING " FIVE DOLLARS ($5)" AND INSERTING IN LIEU THEREOF "FIFTEEN ($15) DOLLARS". AFTER DISCUSSION, SENATOR GREELY WITHDREW THE MOTION. FOLLOWING FURTHER DISCUSSION, SENATOR GREELY AGAIN MADE THE MOTION INSERTING "FIFTEEN DOLLARS ($15)" IN LIEU OF "FIVE DOLLARS ($5)" ON PAGE 4, LINE 2. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATOR ROBERTS VOTING NO.

SENATOR GREELY MOVED TO AMEND PAGE 37, LINE 2 AND 3, BY STRIKING THE SENTENCE: "UNLESS ALL PROVISIONS OF THIS ACT SHALL BE COMPLIED WITH THE MARRIAGE SHALL BE DEEMED INVALID". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SENATOR GREELY MOVED TO AMEND PAGE 33, LINE 20 and 21, BY STRIKING THE FOLLOWING LANGUAGE: "IF A COURT OF THIS STATE HAS JURISDICTION PURSUANT TO THE UNIFORM CHILD CUSTODY JURISDICTION ACT,". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SENATOR ROBERTS MOVED SB 5 DO PASS AS AMENDED. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATOR TURNAGE VOTING NO.

B 4 SENATOR GREELY MOVED SB 4 DO PASS AS AMENDED AS FOLLOWS: AMEND PAGE 1, LINE 17, FOLLOWING "HUSBAND" BY STRIKING "TO" AND INSERTING IN LIEU THEREOF "AND"; AND AMEND PAGE 7, LINE 2 BY STRIKING "FINANCIALLY". THE MOTION CARRIED UNANIMOUS ON A ROLL CALL VOTE.

SENATE COMMITTEE JUDICIARY

Date Feb. 1, 1975 Senate Bill No. 5 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		X
V.E. CETRONE		
MARGARET S. WARDEN		X
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Secretary

/s/ Thomas E. Towe
Chairman

Motion: by Senator Greely to amend the amendment proposed January 29.

(include enough information on motion--put with yellow copy of committee report.)

ROLL CALL

Judiciary COMMITTEE

~~SECOND~~ 44th ~~HALF~~ - ~~43rd~~ LEGISLATIVE SESSION 1975 Date 2/

	PRESENT	ABSENT	EXCUSED
Thomas E. Towe	X		
Joe R. Roberts	X		
V. E. Cetrone	X		
Margaret S. Warden	X		
Robert J. Brown	X		
Glen L. Drake		X	
Jean A. Turnage	X		
Michael Greely	X		

SENATE COMMITTEE JUDICIARY

Date Feb. 1, 1975 Senate Bill No. 5 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS	X	
V.E. CETRONE		
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Secretary

/s/ Thomas E. Towe
Chairman

Motion: by Senator Greely to adopt the amendment as amended.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date Feb. 1, 1975 Senate Bill No. 5 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS		X
V.E. CETRONE		
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Jill Rhyans
Secretary

/s/ Thomas E. Towe
Chairman

Motion: by Senator Greely to amend page 4, line 2.

(include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date Feb. 1, 1973 Senate Bill No. 5 Time

NAME	YES	NO
THOMAS E. TOWE	x	
JOE R. ROBERTS	x	
V.E. CETRONE		
MARGARET S. WARDEN	x	
ROBERT J. BROWN	x	
GLEN L. DRAKE		
JEAN A. TURNAGE	x	
MICHAEL GREELY	x	

Jill Kobyasa
Secretary

/s/ Thomas E. Towe
Chairman

Motion: by Senator Greely to amend page 37, line 2 and 3

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date Feb. 1, 1975 Senate Bill No. 5 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS	X	
V.E. CETRONE		
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Jill Kahyanos
Secretary

/s/ Thomas E. Towe
Chairman

Motion: by Senator Greely to amend page 33, lines 20 and 21

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date Feb. 1, 1975 SENATE Bill No. 5 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS	X	
V.E. CETRONE		
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE		
JEAN A. TURNAGE		X
MICHAEL GREELY	X	

Jill Robyns
Secretary

/s/ Thomas E. Towe
Chairman

Motion: by Senator Roberts SB 5 DO PASS AS AMENDED

(include enough information on motion--put with yellow copy of committee report.)

February 1 19 7

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 5

Respectfully report as follows: That SENATE Bill No. 5

introduced bill, be amended as follows:

1. Amend page 3, section 5, line 3.
   Following: "sex,"
   Strike: "occupation,"

2. Amend page 3, section 5, line 3.
   Following: "address,"
   Strike: "social security"

3. Amend page 3, section 5, line 4.
   Strike: "number,"

4. Amend page 4, section 5, line 2.
   Following: "fee of"
   Strike: "five dollars ($5)"
   Insert: "fifteen dollars ($15)"

DO PASS

5. Amend page 4, section 6, line 22 and 23.
Following: "court"
Strike: ", after a reasonable effort has been made to notify the parents or guardian of each underaged party,"

6. Amend page 4, section 6, line 25 through line 7 on page 5.
Strike: line 25 through line 7 in their entirety
Insert: " a marriage certificate form to a party aged
7. sixteen (16) or seventeen (17) years who has no parent capable of consenting to his marriage, or has the consent of both parents, or of the parent having the actual care, custody, and control, to his marriage, if capable of giving consent, or of his guardian. The court may require both parties to participate in a reasonable period of marriage counseling with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section."

7. Amend page 6, section 10, line 17 through line 24.
Following: "(1)"
Strike: lines 17 through 24 in their entirety
Insert: "The following marriages are prohibited:
(a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;
(b) a marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins;
(c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood.

(2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment."

Renumber: subsequent subsection

8. Amend page 11, section 16, line 17.
Following: "marriage;"
Strike: "and"

9. Amend page 25, section 30, line 16.
Following: "unconscionable"
Insert: "except by written consent of the parties"

10. Amend page 25, section 30, line 16.
Following: "modified,"
Insert: "except by written consent of the parties, or"

February 1, 1973
SENATE BILL 5

11. Amend page 33, section 38, line 20 and 21.
Following: "(2)"
Strike: "A court of this state may exercise jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the"
Insert: "and"

12. Amend page 34, section 39, line 2 and 3.
Following: "county."
Strike: "Unless all the provisions of this act shall be complied with the marriage shall be void." Invalid."

Renumber subsequent sections.

Thomas E. Dow

CHAIRMAN

1975
house

JUDICIARY COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 143	An act to amend section 11-1104, R.C.M. 1947 to provide for prompt judicial review of resolutions proposed by popular initiative.	2/13/75	Colberg	3/5/75	3/11 - Public Health cmte committee BE CONCURRED IN AS AMENDED BE NOT CONCURRED IN	3/21/75 3/10/75
SB 134	An act to amend section 93-4102 to provide for a show cause hearing before a sheriff may seize proerty.	2/14/75	Roberts	3/19/75	BE CONCURRED IN	3/21/75
SB 5	An act to revise the marriage and dissolution of marriage laws.	2/15/75	Regan	3/10/75	AS SO AMENDED BE CONCURRED IN	3/19/75
SB 93	An act to revise tax appeals procedures by providing for reception of additional evidence onjudicial review, the assessment of costs on certain appals, etc.	2/17/75	Turnage	3/18/75	AS SO AMENDED BE CONCURRED IN	3/21/75
HB 174	To provide a state income tax credit to doctors & dentists who practice in Mt. cities or towns with less than 10,000 population.	2/18/75	Lockrem	Hearing held previously	AS AMENDED DO NOT PASS	2/19/75
SB 121	To amend section 94-2-101 of the Criminal code, in the definition of intoxicating substance by deleting refer. to non-alcoholic substances.	2/18/75	Roberts	3/8/75		

SENATE BILL NO. 5 Senator Pat Regan, District #31, is chief sponsor of this act to revize the marriage and dissolutio of marriage laws of this state. Senator Regan testified that she feel this is an excellent bill patterned after the 1970 uniform marriage an divorce law. When the subcommittee started looking at the present law it was obvious they had to do something. They found they could either bring this into conformity with Article II, section 2 or draw up a sec and this bill is a drawn up section. The bill has stood very close scrutiny very well. There is one change in section 10 dealing with prohibiting marriages. The other change is the section requiring judi and parental consent. It does not allow marriage for anyone under the age of sixteen. Common law marriages are still recognized, the provis for licensing are not appreciably changed, "irreconcilable difference were added last year for cause for divorce.

Representative Gary Kimble took over chairing the hearing at this point as Representative Moore had to be excused.

Senator Regan carefully explained each section of the bill and stated that for the first time in Montana history we don' just look at the chief bread winner. She provided each committee memb with written testimony by Father James Provost which she urged each co mittee member to look over. (see exhibit)

Proponent John Frankino, representing the Catholi Family Life Committee, Diocese of Helena, urged support of this bill. He stated the main point is in regard to conciliation hassling found c pages 4 and 5.

Proponent Margaret Davis, representing the League of Women Voters, stated they support this bill. Proponent Jan Gerke, representing the Women's Lobby, stated they feel it is time Montana la does this, particularly section 2.

No other proponents. John C. Wilson, representi the State Department of Health, stated there was a reporting provisio in this bill which they would like to see amended to include race, se and education. (see prepared statement.)

No opponents. No closing. Following very brief questioning the hearing was then closed.

SENATE BILL NO. 4 Senator Antoinette Rosell, District #32, is chie sponsor of this act to change the laws relating husbands and wives in regard to their mutual obligations of support, control of their individual property and their ability to act as indi duals, in order to eliminate sexual discrimination in such laws. She stated this is one of twelve recommended bills and has to do with ind vidual property and support. Under the present law a husband must su his wife, now they must support each other including in nonmonetary m

NAME Pat Regez Bill No. SB 5

ADDRESS _____ Date _____

WHOM DO YOU REPRESENT? Senate District 31

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Sue Sanborn Bill No. SB-5

ADDRESS Box 404 Date 3-10-25

WHOM DO YOU REPRESENT? Jamestown Chamber

SUPPORT ✓ OPPOSE _____ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am submitting written testimony
outlined by Come Forward.

Diocesan Pastoral Office :

March 10, 1975

Re: Senate Bill 5

To the Chairman and Members of the Judiciary Committee, Montana House of Representatives:

I am James H. Provost, Executive-Secretary to the Diocesan Commission on the Family of the Roman Catholic Diocese of Helena; a member of the National Alliance for Family Life, Inc. (NAFL); and a trained canon lawyer with professional experience in marriage and divorce work.

I am writing in support of Senate Bill No. 5.

However, this support is accompanied by the following evaluations and suggestions which have come from review of SB 5 by the Diocesan Commission on the Family, officials of NAFL, and my own personal experience.

Section 2 - Purposes of the act.

This clarifies and modernizes the wording of present Montana law regulatin marriage and divorce. While favoring the change, we wonder at the reality.

Purpose 2 - *"strengthen and preserve the integrity of marriage and safeguard family relationships"* - may be an underlying purpose for the law, but does not appear in any of the provisions of the Bill in an explicit way. Why?

Purpose 3 - *"promote the amicable settlement of disputes that have arisen between parties to a marriage"* - takes more than simplifying divorce laws. This is a legitimate concern of the State. Given the importance of stability in marriage relationships for stability in the body politic, this purpose deserves more detailed implementation.

Sections 4-10, 14 - Entering Marriage

Again, this cleans up the procedures required in Montana law, and we are in favor of the various changes with some exceptions.

1. *Waiting Period* - Present law requires 5 days between application and issuance of license; SB 5 has no waiting period between application and issuance, but 3 day waiting period before implementing the license.

There are practical reasons to simplify the procedure. But look also at the end result - the way youths applying for a license will look at it. We require more testing and evaluation before issuing a license to drive an automobile than we do to enter marriage. There are good reasons for public safety to have the present automobile licensing requirements; there are even more pressing needs for public safety and the welfare of the State to be more serious in granting a license to marry.

middle of page 4):

(4) a certificate from a licensed or approved marriage counsellor for persons not previously married, attesting that a pre-marital counseling program has been completed; or (Note: this would apply no matter what the age of applicants.)

(5) if a pre-marital counseling program has not been completed and is not reasonably available, certification from an approved Conciliation Counselor in the judicial district that he has interviewed the parties; or

(6) for persons previously married, a waiting period of five days has elapsed from the time of application for license to marry. (Note: this waiting period is intended to permit verification by the Clerk as to what happened to the first marriage (i.e., is the previous spouse deceased, or divorce final, or what - depending on what is alleged in applying for the license); and also to permit the Clerk to determine if support payments are being met if this party is responsible (implementing section 48-148, which prohibits issuing a license to one who is delinquent in support payments).

2. Availability of Counselors

Section 8 provides that the court may "require both parties to participate in a reasonable period of marriage counselling with a designated counselor as a condition of the order for issuance of a marriage license...." It also limits the court, in that it may not issue an order for a license unless it finds that "the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interests." Since "Pregnancy alone does not establish" this, the court will need the help of good counsellors if it is to be realistic in coming to the required decision.

We will suggest below that the provisions of the Montana Conciliation Law be revised to require each judicial district to have Conciliation Counselors instead of leaving this optional. This will provide one source of such counselors to aid the Court at this stage of the process as well.

We also propose that serious study be undertaken toward the licensing of marriage counsellors, and to establish professional qualifications for them. Even if the Legislative Council or other agencies of State Government are not prepared to undertake such a study, the Churches will do what they can with their limited resources and invite the collaboration of interested legislators.

Section 11 - Declaration of Invalidity (Annulment)

SB 5 changes the time limits within which a declaration of invalidity may be sought. Since for some people in Montana a divorce is personally, psychologically or morally repugnant - and a civil declaration of invalidity or annulment is preferable - greater care should be taken to provide reasonable access to this option. We offer the following suggestions.

1. *Lack of capacity to consent because of mental incapacity or infirmity.*

   Under SB 5 - must be sought within 90 days petitioner obtained knowledge (and for all of these, the normal presumption is 2 yrs after the wedding).
   Under present law - may be sought until death of either party.
   Psychosis is difficult to recognize until after a couple have settled into married life. It can be a gradual unfolding. At least 4 years should be set, if not the present "lifetime."

2. *Lack of capacity to consent because of influence of alcohol, drugs, etc.*

   Under SB 5 - 90 days. Nothing in present law as such. Acceptable limit.

3. *Lack of capacity to consent because of force, duress, fraud.*

   Under SB 5 - 90 days.
   Under present law - 2 years.
   SB 5 appears to presume that someone who enters marriage under such circumstances would be reasonably free within three months to enter action for invalidity. This presumption is questionable. The 2 year norm seems more realistic.

4. *Lack of physical capacity to consummate the marriage.*

   Under SB 5 - 1 year.
   Under present law - 4 years.
   Experience indicates some people are so embarrassed they don't seek help until at least a year is up. Genuine incapacity is often not determinable clinically or from counselling until longer than a year has elapsed in treatment. 4 years is a more realistic limit.

Sections 15-30 Separation and Divorce

SB 5 repeals existing Montana law on separation and divorce and substitutes the so-called "no fault" approach. This approach attempts to remove the adversary element from the procedure and grounds for obtaining a divorce. It hopes thereby to reduce the acrimony often associated with divorce.

The intent is good, and we share it. In those jurisdictions where this approach has been adopted, there has been some good achieved. However, we cannot support such an approach unconditionally, and must recognize its limitations as well.

1. The divorce process is complicated. For many people in our society, the legal arena provides an acceptable forum to "act out" what is involved for them in terminating intimacy and disengagement. A too simplified or quick "no-fault" approach may actually lead to other forms of "acting out" in society the inner feelings which are now diffused through the divorce proceedings themselves.

2. Where such "no-fault" divorce laws have been adopted, there is a first "rush" of divorces by people who hesitated to divorce under the previous system, but whose marriages have actually terminated.
However, after the first rush, and the rate settles down a bit, it still remains noticeably higher than before the "no-fault" system was adopted.
The reasons may vary, but the facts remain.
We already have a very high divorce rate in Montana. We know it will be higher still under SB 5, even after the initial period is passed. Are we as a society prepared to cope with the impact this will have on our social welfare institutions, as well as on the atmosphere in which families attempt to live and raise their children? Unless something is done to implement more explicitly purpose 2 of SB 5, the implementation of purpose 6 could reduce purpose 2 to empty rhetoric.

3. The role of attorneys under SB 5 will be radically changed when dealing with divorce. Instead of serving as an advocate in an adversary proceedings, the lawyer will enter the domain of interpersonal dynamics. This requires a reeducation of lawyers, and the development of a whole new language (which, apparently, only lawyers themselves can develop). Otherwise, the attorney will continue to act as in the present system, and the benefits of "no-fault" will be negated by the lawyer's attitude, language and manner of dealing with people. Is the Bar in Montana prepared to cope with this?

We also have some observations on specific provisions.

1. *Residency and Waiting Period.*

Under SB 5, only 6 months residency is required prior to filing for divorce, and there is no waiting period for remarriage after the decree is granted (at least, it appears this way).
Under present Montana law, 12 month residency is required to file, and 6 months (recently reduced from 12) waiting before remarriage.

Since adversary grounds are no longer required for divorce under SB 5, and the test is really a question of what's happening "in the life," a longer period to observe the "in the life" situation would appear required if purpose 3 of SB 5 ("promote the amicable settlement of disputes") is to be realized, and if the State is to avoid becoming a divorce mill.

We urge the current one year residency be retained.

2. *Determination of "Irretrievable breakdown."*

The mere fact of separation for 180 days (roughly six months) is sufficient proof of breakdown warrenting divorce. That's the same amount of time required currently by SB 5 for residency to file. To protect purpose 3 of the Bill, either extend the residency period as suggested above, or require in addition to the mere fact of separation a conciliation hearing in all cases, to determine factually that there truly is irretrievable breakdown.

"Serious marital discord" is the other basis for determining "irre-

For the courts to function under SB 5, therefore, qualified counselors must be made available in each judicial district. Section 19 (2) (b) (4) of SB 5, therefore, should be amended by adding after "Montana Conciliation Law":

except that in each judicial district the establishment of conciliation counselors under 36-203 shall be mandatory.

Sections 31-40 Child Custody

We are especially pleased with the effort to state in law that the "best interest of the child" shall be the underlying consideration.

We do have one question:

Section 32, after (5) at the top of page 30, states: *The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child."*

Try as we might, we cannot come up with any conduct of a custodian which would not have some influence on his relationship with the child, and therefore would not properly be open to consideration by the court.

Unless there is a very serious reason for retaining this provision, we ask that it be dropped.

Thank you for your kind consideration of these remarks.

James H. Provost

NAME Margaret S Davis Bill No. SB 2, SB 4, SB 5

ADDRESS 917 Harrison Date 10 Mar 75

WHOM DO YOU REPRESENT? AAT LEAGUE of Women Voters

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The League of Women Voters of Montana supports SB 2, SB 4, and SB 5. These bills address changes mandated by the 1972 State Constitution's equal rights provisions. They have received careful attention and the League believes that they adequately protect both male and female Montana citizens.

NAME Jan Gerke Bill No. SB 3

ADDRESS 1014 Cherry Date 3/10/75

WHOM DO YOU REPRESENT? Women's Lobby, Inc.

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME John C. Wilson Bill No. S.B.5-

ADDRESS 1229 Highland Date 3-10-75

WHOM DO YOU REPRESENT? State Dept of Health & Env. Sciences.

SUPPORT _____ OPPOSE _____ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

TESTIMONY ON SENATE BILL 5
March 10, 1975

My name is John C. Wilson and I am Chief of the Bureau of Records and Statistics in the State Department of Health and Environmental Sciences.

In general I support the thrust of Senate Bill 5. However, I have some concerns regarding the reporting provisions of this bill. Reporting of information on marriage and divorce is important for many reasons. It is essential that we have information on the rates of family formation and dissolution and the demographic characteristics of the persons involved. Both the U.S. Standard Certificates of marriage and divorce include items on race and education. Since this is a uniform marriage and divorce act, it would seem logical to include the items on the U.S. Standard Certificate.

The item on race is needed because there has been increasing interest in recent years on the extent of interracial marriage. The same concern would apply to divorce reporting. The education item is needed as this provides an indication of socio-economic status. If the item on education is included, it would be possible to omit the item on occupation.

Suggested Amendment

On Page 3 line 3 after "sex," add "race, education,"

Suggested Amendment

On Page 13 line 13 after "age," add "race, education,"

SENATE BILL NO. 134 Senator Joe Roberts, District #11, is chief sponsor of the act which deals with a section of the civil code called "claim and delivery." In 1972 the Supreme Court ruled similar types of statutes were unconstitutional. The objection of the U.S. Supreme Court was that there was no due process that plaintiff's claim was just. They said they needed a preliminary hearing to determine if this was necessary.

The bill provides for (1) on page 2, line 12, establishing a hearing; and (2) on page 2, line 21, subsection (b), a remedy in that you can make a showing of this in open court. This is the main merit of the bill.

There were no proponents and no opponents. Senator Roberts waived a closing statement. There were no questions from committee members, and the hearing was closed on the bill.

EXECUTIVE SESSION

SENATE BILL NO. 223 This is Senator Romney's bill and Representatives Baeth, Kendall and Yardley working jointly with staff attorney Diana Dowling tried to make this bill compatible with Representative Yardley's bill which is now in the Senate. Proposed amendments were explained by Diana Dowling (see exhibit of prepared proposed amendments). Following the explanation, Representative Meloy objected to striking section 2 on page 3, line 18.

Representative Meloy moved the amendments as proposed minus striking section 2 on page 3. The motion to amend carried unanimously.

Representative Meloy moved the bill BE CONCURRED IN AS AMENDED. The motion carried unanimously.

SENATE BILL NO. 5 This is Senator Regan's act to revise the marriage and dissolution of marriage laws. Staff attorney Diana Dowling has amendments based on a letter from Father Provo which Representative Yardley went through and kicked out a couple that would hurt the bill. The first amendment by the Department of Environmental Sciences was a request to insert "race and education" as they feel they need this information for statistics.

Father Provo had explained that psychosis was difficult to recognize and there should be at least four years to file an annulment in psychoses cases. Diana Dowling read proposed amendment to the top of page 9, adding a new subsection and dividing the present subsection (a) into three parts (see exhibit).

Representative Anderson moved the amendments. Representative Scully stated the first amendment was a bunch of malarkey, race has nothing to do with this. Representative Anderson withdrew his motion and Representative Scully moved to not accept the first amendment with regard to race and education. This motion carried with Representative Anderson voting no.

Representative Scully moved to strike "judicial approval" on page 8, lines 16 and 17. The motion carried unanimously Representative Scully moved to insert a one-year limitation on psychosis instead of four years or 90 days. The motion carried unanimously. Representative Baeth moved to make the alcohol section subsection (b) with a time limit of 90 days. Representative Scully disagreed and made a substitute motion to make the time period for alcoholism and drugs one year. The motion carried.

Representative Scully moved to change the lack of duress time limit to two years under subsection (c). The motion carried unanimously.

Representative Lory moved to amend page 3(lines 4 through 6 by striking them in their entirety. The motio. carried unanimously.

Representative Scully moved that Senate Bill No. 5 BE CONCURRED IN AS AMENDED. The motion carried unanimously with Representatives Moore, Kimble, Anderson and Yardley absent.

SENATE BILL NO. 27 Senator Murphy is chief sponsor of this measure. Chairman Huennekens stated the discussion was to the effect it would cause an awful mess on the matter of assigning proportions to the offspring. Representative Baeth questioned if there was a fiscal note, to which Chairman Huennekens replied there was and the bill would cause a fantastic loss of money.

Representative Rasmussen stated that as he understands it, Montana law presently doesn't match the federal exemption. He feels this bill addresses a problem here. Chairman Huennekens replied, yes, there is a problem here, but testimony indicated this bill is not the solution.

Representative Seifert stated he feels this bill has a lot of merit, he thought it just affected agricultural land. Diana Dowling stated that in some cases with this bill the wife would get less than she is getting now. He is changing the concept to all the heirs as well as changing the amount of exemption to $60,000. There was much discussion by committee members and Representative Vincent stated the bill contains a principle but we need time to change the substance and study this bill. He feels there is a concept that needs to be aired on the floor. Representative Seifert stated that with permission of the

STANDING COMMITTEE REPORT

AS SO AMENDED March 19, 19 75

BE CONCURRED IN

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 5

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MARRIAGE AND DISSOLUTION OF MARRIAGE LAWS OF THIS STATE BY ADOPTING THE PROVISIONS OF THE UNIFORM MARRIAGE AND DIVORCE ACT AS RECOMMENDED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS; AMENDING SECTION 48-130, R.C.M. 1947; AND REPEALING SECTIONS 21-101 THROUGH 21-150, 48-101, 48-103 THROUGH 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 THROUGH 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 THROUGH 48-203, 48-206, AND 48-207, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

Respectfully report as follows: That SENATE Bill No. 5

Be amended in the third reading bill as follows:

1. Amend page 8, section 11, subsection (c), lines 16 and 17.
Strike: "and did not have the consent of his parents or guardian and judicial approval"

2. Amend page 9, section 11, subsection (a), lines 1 through 5.
Strike: Subsection (a) in its entirety.
Insert: New subsections (a), (b) and (c) to read as follows:
"(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than one (1) year after the petitioner obtained knowledge of the described condition;
(b) for lack of capacity to consent because of the influence of alcohol, drugs or other incapacitating substances, no later than one (1) year after the petitioner obtained knowledge of the described condition;

(Continued on page 2)

Chairman.

STATE PUB. CO.

HOUSE OF REPRESENTATIVES March 19, 1975

COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL NO. 5.

(e) for lack of capacity to consent because of force, duress or fraud, no later than two (2) years after the petitioner obtained knowledge of the described condition;"
Reletter: Subsequent subsections.

3. Amend page 9, section 11, present subsection (b), line 7.
Following: "than"
Strike: "one (1) year"
Insert: "four (4) years"

4. Amend page 30, section 32, subsection (5), lines 4 through 6.
Strike: "The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child."

AS SO AMENDED

BE CONCURRED IN

REPRESENTATIVE HERB HUENNEKENS
CHAIRMAN

HH:pb

SENATE BILL NO. 5

INTRODUCED BY REGAN, GREELY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MARRIAGE AND DISSOLUTION OF MARRIAGE LAWS OF THIS STATE BY ADOPTING THE PROVISIONS OF THE UNIFORM MARRIAGE AND DIVORCE ACT AS RECOMMENDED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS; AMENDING SECTION 46-130, R.C.M. 1947; AND REPEALING SECTIONS 21-101 THROUGH 21-150, 48-101, 48-103 THROUGH 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 THROUGH 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 THROUGH 48-203, 48-206, AND 48-207, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as the "Uniform Marriage and Divorce Act".

Section 2. Purposes of act. This act shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) provide adequate procedures for the solemnization and registration of marriage;

(2) strengthen and preserve the integrity of marriage and safeguard family relationships;

(3) promote the amicable settlement of disputes that have arisen between parties to a marriage;

(4) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(5) make reasonable provision for spouse and minor children during and after litigation; and

(6) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

Section 3. Uniformity of application and construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

Section 4. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this act is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of this state.

Section 5. Form of application, license, certificate, and consent. (1) The director of the department of health and environmental sciences shall prescribe the form for an

. REFERENCE BILL

application for a marriage license, which shall include the following information:

(a) name, sex, ~~occupation,~~ address, ~~social security number,~~ date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child, of whom both parties are parents, born prior to the making of the application unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of health and environmental sciences shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

Section 6. License to marry. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one (1) party has

appeared before the clerk of the district court and paid the marriage license fee of ~~five dollars ($5)~~ FIFTEEN DOLLARS ($15), the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of eighteen (18) years at the time the marriage license is effective, or will have attained the age of sixteen (16) years and has ~~either the consent to the marriage of both parents or his guardian, or~~ OBTAINED judicial approval AS PROVIDED IN SECTION 8; and

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.

Section 7. Effective date of license. A license to marry becomes effective throughout this state three (3) days after the date of issuance, unless the judge of the district court orders that the license is effective when issued, and expires one hundred eighty (180) days after it becomes effective.

Section 8. Judicial approval. (1) The district court~~, after a reasonable effort has been made to notify the parents or guardian of each underaged party,~~ may order the clerk of the district court to issue a marriage license and

~~a marriage certificate form:~~

~~(a) to a party aged sixteen (16) or seventeen (17) years who has no parent capable of consenting to his marriage, or whose parent or guardian has not consented to his marriage; or~~

~~(b) to a party under the age of sixteen (16) years who has the consent of both parents to his marriage, if capable of giving consent, or of his guardian.~~ A MARRIAGE CERTIFICATE FORM TO A PARTY AGED SIXTEEN (16) OR SEVENTEEN (17) YEARS WHO HAS NO PARENT CAPABLE OF CONSENTING TO HIS MARRIAGE, OR HAS THE CONSENT OF BOTH PARENTS, OR OF THE PARENT HAVING THE ACTUAL CARE, CUSTODY, AND CONTROL, TO HIS MARRIAGE, IF CAPABLE OF GIVING CONSENT, OR OF HIS GUARDIAN. THE COURT MAY REQUIRE BOTH PARTIES TO PARTICIPATE IN A REASONABLE PERIOD OF MARRIAGE COUNSELING WITH A DESIGNATED COUNSELOR AS A CONDITION OF THE ORDER FOR ISSUANCE OF A MARRIAGE LICENSE AND A MARRIAGE CERTIFICATE FORM UNDER THIS SECTION.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of

a marriage by proxy upon the showing required by the provisions on solemnization.

Section 9. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(4) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if

either party to the marriage believed him to be so qualified.

Section 10. Prohibited marriages. (1) ~~Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between nieces and uncles, and between aunts and nephews, and between first cousins, and between persons, either of whom is feebleminded, are prohibited and void from the beginning, whether the relationship is legitimate or illegitimate.~~ THE FOLLOWING MARRIAGES ARE PROHIBITED:

(A) A MARRIAGE ENTERED INTO PRIOR TO THE DISSOLUTION OF AN EARLIER MARRIAGE OF ONE OF THE PARTIES;

(B) A MARRIAGE BETWEEN AN ANCESTOR AND A DESCENDANT, OR BETWEEN A BROTHER AND A SISTER, WHETHER THE RELATIONSHIP IS BY THE HALF OR THE WHOLE BLOOD, OR BETWEEN FIRST COUSINS;

(C) A MARRIAGE BETWEEN AN UNCLE AND A NIECE OR BETWEEN AN AUNT AND A NEPHEW, WHETHER THE RELATIONSHIP IS BY THE HALF OR THE WHOLE BLOOD.

(2) PARTIES TO A MARRIAGE PROHIBITED UNDER THIS SECTION WHO COHABIT AFTER REMOVAL OF THE IMPEDIMENT ARE LAWFULLY MARRIED AS OF THE DATE OF THE REMOVAL OF THE IMPEDIMENT.

~~(2)~~ (3) Children born of a prohibited marriage are legitimate.

Section 11. Declaration of invalidity. (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was solemnized the other party did not know of the incapacity.

(c) a party was under the age of sixteen (16) years ~~and did not have the consent of his parents or guardian and judicial approval~~ or was aged sixteen (16) or seventeen (17) years and did not have the consent of his parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsection (1)(a) through (c) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(a) ~~for a reason set forth in subsection (1)(a), by either party or by the legal representative of the party who lacked capacity to consent, no later than ninety (90) days after the petitioner obtained knowledge of the described condition;~~ FOR LACK OF CAPACITY TO CONSENT BECAUSE OF MENTAL INCAPACITY OR INFIRMITY, NO LATER THAN ONE (1) YEAR AFTER THE PETITIONER OBTAINED KNOWLEDGE OF THE DESCRIBED CONDITION;

(B) FOR LACK OF CAPACITY TO CONSENT BECAUSE OF THE INFLUENCE OF ALCOHOL, DRUGS, OR OTHER INCAPACITATING SUBSTANCES, NO LATER THAN ONE (1) YEAR AFTER THE PETITIONER OBTAINED KNOWLEDGE OF THE DESCRIBED CONDITION;

(C) FOR LACK OF CAPACITY TO CONSENT BECAUSE OF FORCE, DURESS OR FRAUD, NO LATER THAN TWO (2) YEARS AFTER THE PETITIONER OBTAINED KNOWLEDGE OF THE DESCRIBED CONDITION;

~~(b)~~ (D) for the reason set forth in subsection (1)(b), by either party, no later than ~~one (1) year~~ FOUR (4) YEARS after the petitioner obtained knowledge of the described condition;

~~(c)~~ (E) for the reason set forth in subsection (1)(c), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party,

the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one (1) of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of this act relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

Section 12. Putative spouse. Any person who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited (section 10) or declared invalid (section 11). If there is a legal spouse or other putative spouses, rights acquired by a putative

spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

Section 13. Application. All marriages contracted within this state prior to the effective date of this act, or outside the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicil of the parties, are valid in this state.

Section 14. Validity of common law marriage. Common law marriages are not invalidated by this act. Declarations of marriage pursuant to sections 48-130 through 48-132 are not invalidated by this act.

Section 15. Application of the Montana rules of civil procedure to proceedings under this act. (1) The Montana rules of civil procedure apply to all proceedings under this act, except as otherwise provided in this act.

(2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of _____ and _____". A custody or support proceeding shall be entitled "in re the (Custody) (Support) of _____".

(3) The initial pleading in all proceedings under this

act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this act, shall be denominated as provided in the Montana rules of civil procedure.

(4) In this act, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

Section 16. Dissolution of marriage--legal separation. (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state, or was stationed in this state while a member of the armed services, and that the domicil or military presence has been maintained for ninety (90) days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence

(i) that the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or

(ii) that there is serious marital discord which

adversely affects the attitude of one or both of the parties towards the marriage; ~~and~~

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of section 19 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or provided for a separate, later hearing to complete these matters.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

Section 17. Procedure — commencement — pleadings — abolition of existing defenses. (1) All proceedings under this act are commenced in the manner provided by the Montana rules of civil procedure.

(2) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of section 16 exist and that the marriage is irretrieveably broken in that either

(i) the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and that there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage, and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenace of a spouse; and

(f) the relief sought.

(3) Either or both parties to the marriage may initiate the proceeding.

(4) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana rules of civil procedure and may within twenty (20) days after the date of service file a verified response. No decree may be entered until twenty (20) days after the date of service.

(5) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(6) The court may join additional parties proper for the exercise of its authority to implement this act.

Section 18. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary

expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(4) A response may be filed within twenty (20) days after service of notice of motion or at the time specified in the temporary restraining order.

(5) On the basis of the showing made and in conformity with sections 22 and 23, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(6) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings

in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 30; and

(c) terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

Section 19. Irretrievable breakdown. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) make a finding whether the marriage is irretrievably broken; or

(b) continue the matter for further hearing not fewer than thirty (30) nor more than sixty (60) days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. The court at the request of either party shall,

or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

(4) Nothing in this section shall be interpreted to affect the provisions of sections 36-201 through 36-205, known as the Montana Conciliation Law.

Section 20. Separation agreement. (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance, and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them, or

(b) if the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

Section 21. Disposition of property. (1) In a proceeding for dissolution of a marriage, legal separation, or disposition of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both however and whenever acquired, and whether the title thereto is in the name of the husband or wife or both. In making apportionment the court shall consider the duration of the marriage, and prior marriage of either party, antenuptial agreement of the parties, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates, and the contribution of a spouse as a homemaker or to the family unit. In disposing of property acquired prior to the marriage; property acquired by gift, bequest, devise or descent; property acquired in exchange

for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including the non-monetary contribution of a homemaker; the extent to which such contributions have facilitated the maintenance of this property and whether or not the property disposition serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

Section 22. Maintenance. (1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for his reasonable needs, and

(b) is unable to support himself through appropriate

employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant facts including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age, and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

Section 23. Child support. In a proceeding for

dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(1) the financial resources of the child;

(2) the financial resources of the custodial parent;

(3) the standard of living the child would have enjoyed had the marriage not been dissolved;

(4) the physical and emotional condition of the child, and his educational needs; and

(5) the financial resources and needs of the noncustodial parent.

Section 24. Representation of child. The court may appoint an attorney to represent the interests of a minor dependent child with respect to his support, custody, and visitation. The court shall enter an order for costs and fees in favor of the child's attorney. The order shall be made against either or both parents, except that, if the responsible party is indigent, the costs shall be waived.

Section 25. Payment of maintenance or support to court. (1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court

as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

Section 26. Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds two (2) weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding one dollar ($1) as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

Section 27. Costs—attorney's fees. The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Section 28. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than six (6) months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of court shall give notice of the entry of a decree of dissolution or legal separation:

(a) if the marriage is registered in this state, to

the clerk of the district court of the county where the marriage is registered who shall enter the fact of dissolution or separation in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court may, and if there are no children of the parties shall, order her maiden name or a former name restored.

Section 29. Independence of provisions of decree or temporary order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

Section 30. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in subsection (6) of section 20, the provisions of any decree respecting maintenance or support may be modified BY A COURT only as to installments accruing subsequent to the motion for modification and ~~only~~ EITHER:

(A) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable ~~EXCEPT BY~~; OR

(B) UPON WRITTEN CONSENT OF THE PARTIES. The provisions as to property disposition may not be revoked or modified BY A COURT, EXCEPT: ~~BY~~

(A) UPON WRITTEN CONSENT OF THE PARTIES, OR ~~unless~~

(B) IF the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

Section 31. Jurisdiction—commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody

determination by initial or modification decree if:

(a) this state

(i) is the home state of the child at the time of commencement of the proceedings, or

(ii) had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because

(i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and

(i) has been abandoned or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with paragraphs

(a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child, and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under paragraphs (c) and (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who

may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

Section 32. Best interest of child. The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school, and community; and

(5) the mental and physical health of all individuals involved.

~~The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.~~

Section 33. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in section 40. The court may award temporary custody under the

standards of section 32 after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child requires that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under subsection (a)(ii) or (b) of section 31 is dismissed, any temporary custody order is vacated.

Section 34. Interviews. (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

Section 35. Investigations and reports. (1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the county welfare department.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of sixteen (16) unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days prior to the hearing. The investigator shall make available to counsel and to any party not represented

by counsel the investigator's file of underlying data, and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

Section 36. Hearings. (1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the

record.

Section 37. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

Section 38. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may

order the county welfare department to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

Section 39. Modification. (1) No motion to modify a custody decree may be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral, or emotional health.

(2) ~~If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the~~ THE court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian; or

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health, and the harm likely to be caused by a change of environment

is outweighed by its advantages to him.

(3) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

Section 40. Affidavit practice. A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

Section 41. Application. (1) This act applies to all proceedings commenced on or after its effective date.

(2) This act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this act shall be in compliance with this act.

(3) This act applies to all proceedings commenced

after its effective date for the modification of a judgment or order entered prior to the effective date of this act.

(4) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this act, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

Section 42. Act supersedes other laws or regulations. If any provision of this act is in conflict with any other law of this state, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law, rule, or regulation shall be deemed superseded for the purpose of this act.

Section 43. Severability. If any provision of this act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

Section 44. Section 48-130, R.C.M. 1947, is amended to read as follows:

"48-130. Declaration of marriage without solemnization--how made. Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in section ~~48-116~~ 9 of this act

must prior to executing the declaration, secure the premarital test certificate required by ~~section 48-134~~ this act, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed. Any such declaration of marriage shall substantially contain the following:

1. The names, ages, and residences of the parties;

2. The fact of marriage;

3. Name of father~~,~~ and maiden name of mother~~,~~ of both parties, and address of each;

4. That both parties are legally competent to enter into the marriage contract.

Such declaration must be subscribed by the parties and attested by at least two (2) witnesses, and formally acknowledged before the clerk of the district court of said county. ~~Unless all the provisions of this act shall be complied with the marriage shall be deemed invalid.~~"

Section 45. Sections 21-101 through 21-150, 48-101, 48-103 through 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 through 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 through 48-203, 48-206, and 48-207, R.C.M. 1947, are repealed.

Section 46. This act is effective January 1, 1976.

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